

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:	ADMINISTRATIVE CONSENT ORDER
MODULEX U.S. MANUFACTURING LLC dba IMAGE FIRST, LLC	NO. 2012-AQ-21

TO: Mike McKeag, General Manager Image First, LLC 1001 Pinder Avenue, Box 416 Grinnell, Iowa 50112	Thomas B. Latimer, Registered Agent Modulex U.S. Manufacturing LLC 1001 Pinder Avenue, Box 416 Grinnell, Iowa 50112
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I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Modulex U.S. Manufacturing LLC dba Image First, LLC (Modulex) for the purpose of resolving violations of recordkeeping and permitting requirements. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Any questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Jeff Theobald
Iowa Department of Natural Resources
Field Office No. 5
401 SW 7th, Suite 1
Des Moines, IA 50309
Phone: 515-725-0373

Relating to legal requirements:

Anne Preziosi, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515-281-6243

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative order is issued pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code

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chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. Modulex has a facility in Grinnell, Iowa, where it designs and builds signs for a variety of environments, including corporate offices, healthcare, education, banking, and convention centers. Using aluminum and fiberglass materials, Modulex manufactures and supplies architectural exterior signs, both illuminated and non-illuminated, to trade partners and associates in the signage industry.

2. Jeff Theobald of DNR Field Office No. 5 inspected the Modulex Grinnell facility on January 5, 2011. During Mr. Theobald's inspection, he found that Modulex did not have complete, current records; records were not readily available; and some record limitations?? and monitoring requirements were not maintained. Modulex failed to comply with Condition 15 of Air Quality Construction Permit Nos. 01-A-498 (Emission Point 1) and 01-A-499-S2 (Emission Point 2), which require the maintenance of twelve-month rolling averages demonstrating that the quantity of resin is limited to 100 tons and the quantity of gel used is limited to 20 tons. Modulex violated Air Quality Construction Permit Nos. 01-A-498 and 01-A-499-S2, both of which require Modulex to "on a monthly basis calculate emissions (in tons). After twelve months of operation emissions shall be calculated on a twelve-month rolling total." Modulex also violated Air Quality Construction Permit No. 01-A-498, Condition 15, which requires Modulex to "maintain a record of all maintenance and replacement of the filter." Mr. Theobald informed Modulex during the inspection that Modulex is required to track all filter changes on Emission Point 1, as Modulex was not recording this data.

3. On January 6, 2011, Modulex emailed records to DNR Field Office No. 5 to support its position that Modulex was in compliance with its construction permit limits. However, these records contained incorrect calculations, and twelve-month rolling usage totals were not being calculated. On January 21, 2011, Mr. Theobald conducted a follow-up visit to Modulex. During that visit, he concluded and informed Modulex that the facility needed to obtain necessary calculations from its paint suppliers as soon as possible after the first of each month to produce twelve-month rolling totals in compliance with permit conditions. Mr. Theobald also stated Modulex is required to review its permits and each permit's requirements as well as determine if its facility is subject to NESHAP Subpart WWWW (40 CFR Part 63, Subpart WWWW). On January 28, 2011, Modulex sent revised twelve-month rolling totals to DNR Field Office No. 5.

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4. A February 9, 2011, Notice of Violation letter was issued to Modulex for failure to maintain adequate, complete records. The February 9, 2011, Notice of Violation letter required that Modulex' records be maintained as required by air quality construction permits, and the letter required a written response from Modulex by February 28, 2011. In a February 24, 2011, response submitted to Field Office No. 5, Modulex indicated that it had converted its data recording to twelve-month rolling totals, implemented a visible recording procedure for maintenance activities, begun recording magnehelic readings for the paint and sand booth along with filter changes for the fiberglass booth, and was contacting the DNR Air Quality Bureau for a recommendation on whether the paint booth required a permit modification and whether the facility was subject to NESHAP Subpart WWWW.

5. Modulex has a past history of failing to maintain proper records in order to ensure continued compliance with operating limits stated in air quality construction permits. During four inspections, conducted in 2003, 2005, 2008, and 2011, Field Office No. 5 inspectors documented recordkeeping in violation of Modulex's construction permits.

6. On April 19, 2001, Modulex received its first air quality construction permits from DNR. These air quality construction permits contained operating limits. On July 18, 2001, Bill Gross of DNR Field Office No. 5 conducted a compliance assistance inspection for Modulex's Grinnell facility. In a July 24, 2001, letter, Mr. Gross reminded Modulex to review its permits and comply with all permit provisions.

7. On April 3, 2002, Dennis Thielen of DNR's Air Quality Bureau issued a Notice of Violation letter to Modulex for failing to obtain a construction permit prior to installing a sanding station. The April 3, 2002, Notice of Violation letter stated that the sanding station was installed in July 2001, but an application for a construction permit was not submitted to DNR's Air Quality Bureau until March 21, 2002. The April 3, 2002, Notice of Violation letter stated that Modulex needed to obtain construction permits prior to new construction or non-exempt modifications of its facility.

8. On June 26, 2002, Mr. Thielen issued a Notice of Violation letter stating that Modulex was not in compliance with the stack testing requirements of its Air Quality Construction Permit No. 01-A-499. The construction permit was issued for a fiberglass booth (Emission Point 2) on August 13, 2001, and required stack testing within 60 days of achieving maximum production rate and by not later than 180 days from startup. Modulex failed to perform stack testing as required by this permit. The June 26, 2002, Notice of Violation letter required stack testing be scheduled and conducted within thirty days of the Notice of Violation letter issuance.

9. On January 17, 2003, Mr. Gross conducted an inspection of Modulex's facility. On February 25, 2003, Mr. Gross issued a Notice of Violation

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letter to Modulex for failing to have complete, up-to-date recordkeeping. Modulex failed to comply with Condition 15 of Air Quality Construction Permit Nos. 01-A-498 (Emission Point 1) and 01-A-499-S2 (Emission Point 2). The February 25, 2003, Notice of Violation letter stated Modulex needed to maintain records as specified in its construction permits, which required maintaining twelve-month rolling totals. In response, Modulex submitted updated records to Field Office No. 5 that appeared to show compliance with operating limits in construction permits. The February 25, 2003, Notice of Violation letter also stated that Emission Points 3 (Air Quality Construction Permit No. 02-A-416) and 4 (Air Quality Construction Permit No. 02-A-417) at the Grinnell facility were not constructed as specified in construction permits issued to Modulex. The February 25, 2003, Notice of Violation letter required that by April 1, 2003, the stacks for Emission Point 3, the sanding station, and Emission Point 4, the mixing room, should conform to Modulex's construction permits or that Modulex should submit a request for permit amendments to DNR's Air Quality Bureau. On June 16, 2003, Modulex submitted a permit amendment request to DNR's Air Quality Bureau to change the stack characteristic for Emission Point 3. On July 9, 2003, Modulex received a permit amendment from DNR's Air Quality Bureau for Emission Point 3, the sanding station, to reflect current stack characteristics (Air Quality Construction Permit No. 02-A-416-S1). At that time, Modulex did not address the issues with Emission Point 4, as requested.

10. On February 4, 2005, Amy Scott of DNR Field Office No. 5 inspected Modulex's facility and informed Modulex that records needed to be updated monthly and calculated as twelve-month rolling totals. In response, on February 7, 2005, Modulex provided calendar year material usage records to DNR Field Office No. 5. On February 25, 2005, Ms. Scott issued a Notice of Violation letter to Modulex for failing to maintain complete, up-to-date records and not having those records readily available during inspection. Modulex failed to comply with Condition 15 of Air Quality Construction Permit Nos. 01-A-498 (Emission Point 1) and 01-A-499-S2 (Emission Point 2). The February 25, 2005, Notice of Violation letter required Modulex to maintain records as specified in construction permits. The Notice of Violation letter stated that Modulex was required to keep twelve-month rolling totals. Additionally, due to prior record-keeping violations at Modulex's facility, the February 25, 2005, Notice of Violation letter required Modulex to submit operation records to DNR Field Office No. 5 for the months of February, March, and April 2005 within two weeks after the end of each respective month. On May 4, 2005, Modulex submitted updated records to DNR Field Office No. 5 which appeared to show compliance. Lastly, the February 25, 2005, Notice of Violation letter required that by March 15, 2005, Modulex bring Emission Point 4 into compliance with permit specifications or submit a permit amendment to DNR's Air Quality Bureau. On March 11, 2005, Modulex received a permit modification from DNR's Air Quality Bureau, making the permit for Emission Point 4 consistent with its current stack characteristics (Air Quality Construction Permit No. 02-A-417-S1).

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11. On June 17, 2008, Ted Peterson of DNR Field Office No. 5 conducted an inspection of Modulex's facility. Records were not available at the time of Mr. Peterson's inspection. Mr. Peterson informed Modulex of the need for Modulex to update its records monthly and calculate twelve-month rolling totals. Because Modulex did not have records available at the time of inspection, Mr. Mike McKeay, General Manager for Modulex, agreed to compile and format a record-keeping spreadsheet. Mr. Peterson also stated that Modulex needed to record the complete date, including the year, in records for filter changes and maintenance activities on Emission Point 1 in compliance with Air Quality Construction Permit No. 01-A-498. Modulex was not indicating the year in its maintenance activities records for Emission Point 1. Modulex agreed to begin including the full date, including the year, in its records. On July 16, 2008, Modulex provided material usage records to DNR Field Office No. 5 and provided revised records on August 14, 2008. These records indicated that Modulex had used RCI GP Clear Resin product that had a styrene content of 44%, which exceeded its permit limit of a styrene content of 43%. However, the records indicated that Modulex's emission threshold of 6.13 tons of styrene was not exceeded during this period. On September 2, 2008, Mr. Peterson issued a Notice of Violation letter to Modulex for failing to have complete, up-to-date records and not having those records readily available during inspection. Modulex failed to comply with Condition 15 of Air Quality Construction Permit Nos. 01-A-498 (Emission Point 1) and 01-A-499-S2 (Emission Point 2). The September 2, 2008, Notice of Violation letter stated Modulex should note the requirements of the Air Quality Compliance Inspection report, which was enclosed. These requirements included maintaining records as twelve-month rolling totals and recording maintenance activities with the complete date. The September 2, 2008, Notice of Violation letter required Modulex to respond to the requirements in the Air Quality Compliance Inspection report by September 30, 2008.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.

2. Pursuant to Iowa Code sections 455B.133 and 455B.134(3)(a), 567 IAC 22.1(1) requires that a person who constructs, installs, reconstructs or alters equipment or control equipment must first obtain an air quality construction permit from the DNR, unless an exemption applies.

3. Pursuant to Iowa Code section 455B.133, 567 IAC 22.3(3) authorizes permits to be issued subject to written conditions. The above facts indicate violations of air quality construction permits issued to Modulex.

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V. ORDER

THEREFORE, DNR orders and Modulex agrees to the following:

1. In the future, Modulex shall maintain records in accordance with construction permit requirements and shall comply with all permit conditions; and
2. Modulex shall pay a penalty of \$3,900.00 within 30 days of the date this order is signed by the Director.

VI. PENALTY

Pursuant to the provisions of Iowa Code section 455B.109 and 567 IAC chapter 10, which authorize the Director to assess administrative penalties, a penalty of \$5,400.00 is assessed by this administrative consent order. The penalty must be paid within 30 days of the date this order is signed by the Director. The administrative penalty is determined as follows:

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with a penalty. The administrative penalty assessed by this order is determined as follows:

Economic Benefit – Recordkeeping has not been performed as required for a period of over eight years despite numerous Notice of Violation letters. DNR has obtained evidence that Modulex received a benefit of at least \$400.00 from its failure to keep accurate, complete, and current records. Therefore, \$400.00 is assessed for this factor.

Gravity of the Violation – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. Substantial penalties are authorized by statute. Despite the high penalties authorized, DNR has determined at this time that the most equitable and efficient means of resolving this matter is through the issuance of an

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administrative consent order. Since recordkeeping is the main proof of compliance with permit requirements for this facility, failure to follow recordkeeping requirements undermines the construction permitting and air quality compliance program for the State of Iowa. Therefore, \$1,500.00 is assessed for this factor.

Culpability – Modulex has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that its conduct is subject to DNR's requirements. Modulex is required to comply with its construction permits. However, Modulex has been cited numerous times for failing to maintain correct, current records, and for other air quality construction permit violations. Modulex has received six Notice of Violation letters for air quality violations since 2002. Therefore, \$2,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Modulex. For that reason, Modulex waives its rights to appeal this order or any part thereof.

VIII. NONCOMPLIANCE

Failure to comply with this administrative consent order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.146. Compliance with Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order.



Chuck Gipp, DIRECTOR
Iowa Department of Natural Resources

Dated this 6th day of
July, 2012.



Modulex U.S. Manufacturing LLC

Dated this 25th day of
June, 2012.

Facility No. 79-01-035; Anne Preziosi; DNR Field Office 5; VII.C.2